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Reply Due 11/3/02

In re Application of
ULRICHSEN, Borre, Bengt, et al.
U.S. Application No.: 09/936,924
PCT No.: PCT/IB00/00301
International Filing Date: 20 March 2000
Priority Date: 19 March 1999
Attorney's Docket No.: 0279.3014.001
For: INSPECTION OF MATTER

DECISION ON PETITION

This decision is issued in response to the "Request For Acceptance Of Late Response To Notification Of Missing Requirements Under 35 U.S.C. 371 In The United States Designated/Elected Office (DO/EO/US)" filed 21 June 2002, which has been treated as a petition under 37 CFR 1.181 to confirm the filing of a response to the Notification Of Missing Requirements on 13 December 2001. No petition fee is required.

BACKGROUND

On 20 March 2000, applicants filed international application PCT/IB00/00301 which claimed a priority date of 19 March 1999 and which designated the United States. On 28 September 2000, a copy of the international application was communicated to the United States Patent and Trademark Office ("USPTO") by the International Bureau ("IB").

On 09 October 2000, a Demand was filed with the International Preliminary Examining Authority electing the United States. The election was made prior to the expiration of 19 months from the priority date. As a result, the deadline for submission of the basic national fee was extended to expire thirty months from the priority date, i.e., 19 September 2001.

On 19 September 2001, applicants filed a transmittal letter for entry into the national stage in the United States accompanied by, among other materials, payment of the basic national fee.

On 01 November 2001, the United States Designated/Elected Office (DO/EO/US) mailed a Notification Of Missing Requirements indicating that an oath or declaration in compliance with 37 CFR 1.497 and a surcharge for providing the oath or declaration later than thirty months from the priority date were required. The Notification also informed applicants that the failure to submit these materials within two months of the date of the Notification would result in abandonment of the application.

On 21 June 2002, applicants filed the "Request For Acceptance Of Late Response To Notification Of Missing Requirements Under 35 U.S.C. 371 In The United States Designated/ Elected Office (DO/EO/US)" considered as a petition under 37 CFR 1.181 herein. The petition asserts that applicants filed a response to the Notification Of Missing Requirements, including an executed declaration and the required surcharge, on 13 December 2001. Accompanying the petition is a copy of the materials purportedly filed on 13 December 2001.

DISCUSSION

A review of the materials purportedly filed on 13 December 2001 reveals that, unlike other papers filed by applicants in this application, these materials do not contain a certification of mailing under 37 CFR 1.8 or a certification of deposit as "Express Mail" under 37 CFR 1.10, nor have applicants provided any additional evidence of the purported 13 December 2001 filing (i.e., an "Express Mail" receipt, a copy of a mail log entry made at the time of the purported submission, etc). Absent further evidence of the 13 December 2001 filing, it cannot be concluded that the materials attached to the present petition were filed prior to 21 June 2002, the filing date of the present petition.

The deadline for a response to the Notification Of Missing Requirements was 02 January 2002. Extensions under 37 CFR 1.136(a) were available for five months, that is, until 02 June 2002. Because applicant has not submitted adequate evidence that the declaration was filed prior to 21 June 2002, the present application is abandoned for failure to file a timely response to the Notification Of Missing Requirements.

CONCLUSION

Applicants' petition under 37 CFR 1.181 is **DISMISSED** without prejudice.

This application is **ABANDONED** for failure to file a timely response to the Notification Of Missing Requirements mailed 01 November 2001.

If reconsideration on the merits of this petition is desired, a proper response must be filed within **TWO (2) MONTHS** from the mail date of this decision. Any reconsideration request should include a cover letter entitled "Renewed Petition Under 37 CFR 1.181" and should include adequate evidence that the materials attached to the present petition were originally filed on 13 December 2001.

Applicants might also consider filing a petition to revive the application under 37 CFR 1.137(b).

Please direct further correspondence with respect to this matter to the Assistant Commissioner for Patents, Box PCT, Washington, D.C. 20231, and address the contents of the letter to the attention of the International Division, Legal Staff.



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